

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 12. ARIZONA COLISEUM AND EXPOSITION CENTER BOARD

PREAMBLE

1. Sections Affected

Article 1
R3-12-101
Article 2
Article 2
R3-12-201
R3-12-201
R3-12-202
R3-12-202
R3-12-203
R3-12-203
R3-12-204
R3-12-204
R3-12-205
R3-12-205
R3-12-206
R3-12-206
R3-12-207
R3-12-208
R3-12-209
R3-12-210
R3-12-211
R3-12-212
Article 3
R3-12-301
R3-12-302
R3-12-303
R3-12-304
R3-12-305
R3-12-306
R3-12-307
R3-12-308
R3-12-309

Rulemaking Action

Amend
Amend
Repeal
New Article
Repeal
New Section
Repeal
Repeal
Repeal
Repeal
Repeal
New Article
New Section
New Section

Arizona Administrative Register
Notices of Proposed Rulemaking

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 3-1003(A)(10)

Implementing statute: A.R.S. § 3-1003(A)(2)

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2399, May 31, 2002

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Grant Pearson

Address: 1826 W. McDowell
Phoenix, AZ 85007

Telephone: (602) 252-6771

Fax: (602) 495-1302

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules in this package primarily govern the games offered at the Arizona State Fair. The rules govern concessionaire conduct, types of games, how each game is played, the dollar value of prizes offered, and how often a player may win each game's top prize. The rules protect the public's safety and welfare. Certain rules protect the concessionaire from persons taking unfair advantage of a game. The rules have existed since 1987. The rules were changed to remove unnecessary or duplicative provisions and correct stylistic, grammatical, and formatting problems.

6. A reference to any study that the agency relies on in its evaluation of or justification for the proposed rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

No studies underlying these rules exist.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

The rules do not diminish a previous grant of authority of any political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

The rules govern games played at each Arizona State Fair. The rules are designed to protect both concessionaires and the public from wrongful conduct. The rules are very similar to rules of other fairs and most, if not all, game operators have worked within these rules for years. Because these rules and others like them have existed for a long period of time, the modifications in this package should have little or no economic impact. The rules do require that concessionaires comply with certain structural constraints to ensure the games are safe for the public. The Board drafted these rules with existing industry standards in mind. Consequently, the Board expects very little impact on concessionaire expenditures because compliance is necessary at other stops along the fair circuit. Other required expenditures include uniforms and signage. Most concessionaires and carnivals have uniform requirements in place. The Board provides most of the signs required.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Grant Pearson

Address: 1826 W. McDowell
Phoenix, AZ 85007

Telephone: (602) 252-6771

Fax: (602) 495-1302

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Board will accept written comments on the rules until the close of record. The Board will hold an oral proceeding on July 17, 2002 at 10:00 a.m. to hear public comment on the rules. This is the last date the Board will accept public comment on the rules. The hearing will take place on the west side of the coliseum in the administrative offices located at 1826 W. McDowell, Phoenix, AZ 85007.

Arizona Administrative Register
Notices of Proposed Rulemaking

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules:

TITLE 3. AGRICULTURE

CHAPTER 12. ARIZONA COLISEUM AND EXPOSITION CENTER AND STATE FAIR BOARD

ARTICLE 1. ~~ADMINISTRATION~~ DEFINITIONS

Section

R3-12-101. Definitions

ARTICLE 2. ~~ARIZONA STATE FAIR GAMES~~ GAME DESCRIPTIONS AND STANDARDS

Section

R3-12-201. ~~Authorized amusement games~~ Hoop or Ring Toss Games

R3-12-202. ~~Prize limit~~ Dart Games

R3-12-203. ~~Concession safety~~ Ball Toss Games

R3-12-204. ~~Posting of fees and rules~~ Shooting Games

R3-12-205. ~~Prizes~~ Coin Games

R3-12-206. ~~Contracts and permits~~ Other Games

R3-12-207. ~~Concessionaire responsibility~~ Repealed

R3-12-208. ~~Conduct~~ Repealed

R3-12-209. ~~Sales location~~ Repealed

R3-12-210. ~~Sound control~~ Repealed

R3-12-211. ~~Advertising~~ Repealed

R3-12-212. ~~Height and line designation~~ Repealed

ARTICLE 3. CONCESSIONAIRES

Section

R3-12-301. Safety

R3-12-302. Posting Prices and Game Standards

R3-12-303. Prizes

R3-12-304. Valuable Prize Limit

R3-12-305. Lease Standards

R3-12-306. Uniforms

R3-12-307. Concession Location

R3-12-308. Sound Control

R3-12-309. Height and Line Designation

ARTICLE 1. ~~ADMINISTRATION~~ DEFINITIONS

R3-12-101. Definitions

In this chapter, the following definitions shall apply unless the context otherwise requires:-

1. "Agent" or "Operator" means any person who is employed, whether or not paid in any manner, by a concessionaire to work in any game or novelty stand at the fair-
2. "Arizona State Fair Games Inspector" means any person employed by the Board and reporting to the Director or his designee, assigned to work at the Arizona State Fair with the specific duty to enforce rules adopted by the Board regulating concessions-
3. "Board" means the Arizona Coliseum and Exposition Center Board-
4. "Concession" means any business which sells merchandise, services or manages games contracted under the authority of the Board-
5. "Concessionaire" means any person who owns, operates, or leases a concession and has obtained a contract from the Board-
6. "Director" means the Executive Director for the Board-

Arizona Administrative Register
Notices of Proposed Rulemaking

7. ~~“Fair” means the annual exposition conducted by the Board.~~
8. ~~“Game” means any contracted concession of the annual Fair where a person engages in the activity of amusement, for a fee.~~
9. ~~“Midway Coordinator” means any person employed by the Board for the purpose of coordinating activities of midway rides, concessions, and games and who assists in the placing of all equipment assigned to the midway at the Fair. The Midway Coordinator shall also enforce all rules relating to the midway.~~
10. ~~“Obscene” means, in applying contemporary community standards, the work or item, taken as a whole, appeals to the prurient interest, whether the work or item depicts or describes, in a patently offensive way, sexual activity or conduct, and whether the work or item, taken as a whole, lacks serious literary, artistic, political or scientific value, as defined in A.R.S. 13-3501.~~
11. ~~“Person” means any individual, partnership, corporation or agent of the same, acting either individually, or as a group in any matter covered by these rules.~~
12. ~~“Player” means any person who plays a game at the fair whether or not he is attempting to win a prize.~~
13. ~~“Prize” means an item won by a player of a game at the fair upon completion of some task.~~

In this Chapter, the following definitions apply unless the context requires otherwise:

“Arizona State Fair Games Inspector” or “Inspector” means any person employed by the Director to enforce this Chapter. The term includes the Midway Coordinator, the person employed by the Director to coordinate midway rides, concessions, and games and assist in placing equipment assigned to the midway.

“Board” means the Arizona Exposition and State Fair Board.

“Concession” means any business that sells merchandise or services, conducts games, or provides other entertainment regulated by the Board.

“Concessionaire” means any person who owns, operates, or leases a concession and includes any person acting as an agent of the concessionaire.

“Director” means the Executive Director of the Board or a Deputy Director if the Executive Director is unable to act.

“Game” means any concession that accepts payment for providing an activity of amusement.

“Location” means the stall, stand, booth or site from which the concessionaire operates or sells merchandise or services.

“Person” has the meaning prescribed in A.R.S. § 1-215.

“Player” means any person who plays a game at the Fair, whether or not the person is attempting to win a prize.

“Prize” means an item won by a player after successful completion of a game’s activity.

“State Fair” or “Fair” means the Arizona State Fair, an annual exposition conducted by the Board.

ARTICLE 2. ~~ARIZONA STATE FAIR GAMES~~ GAME DESCRIPTIONS AND STANDARDS

R3-12-201. ~~Authorized amusement games~~ Hoop or Ring Toss Games

~~The Board, for the purpose of conducting and promoting the Fair in the best interest of the people of Arizona, authorizes the following amusement games to be operated by persons under a Board contract at an authorized fair location:~~

1. ~~Hoop or Ring Toss. The player tosses hoops or rings over a target. The operator shall specifically advise the player as to the extent the hoops or rings must go over the target. All hoops of the same color used at an individual booth shall be the same size or the operator shall advise the player by posting signs or using color codes denoting the different sizes.~~
2. ~~Dart games. The target area for all dart games shall be of a material capable of retaining the point of the dart. Dart points may be metal, velcro or suction cups. The target area shall be in the rear of the stand and shall be at least 3 feet but not more than 15 feet from the foul line. The target shall be stationary at all times. Dart game concessions shall be constructed to prevent the dart from going through the concession stand to an adjoining stand or aisle.~~
 - a. ~~Balloon (Balloon Smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.~~
 - b. ~~Dart Throw. The targets are various sizes and shapes located on the target area. The player throws or propels darts individually at the target. The player hits, and the dart must stick, in a predetermined target to win the prize as designated.~~
 - c. ~~Tie Tac Toe Dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row on the target. The darts may line up vertically, horizontally or diagonally to win.~~
 - d. ~~Add 'Em Up Darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. All darts stuck on lines shall receive a re-throw. The player has the right to add up the score of the darts thrown.~~

Arizona Administrative Register
Notices of Proposed Rulemaking

3. ~~Ball Tosses. In all ball toss games, the balls used at a specific stand shall be of the same weight and size. Targets shall be either of an identical weight and size or shall be color coded to show their differences or the difference shall be precisely described on a sign.~~
- ~~a. Milk Bottle Toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles shall be constructed of wood, metal or plastic or a combination of the above three. Operators may vary the number of bottles and balls used in each game. No floating or loose weights in bottles shall be allowed. The weight of individual bottles shall not exceed seven and one-half pounds.~~
 - ~~b. Milk Can. The player tosses balls into the opening of a milk can or other object or through a cone to win.~~
 - ~~c. Football Toss (Tire Toss). The player tosses or throws footballs through a stationary tire or hoop to win.~~
 - ~~d. Basketball Toss/Throw. The player tosses or throws basketballs through a basketball type hoop to win.~~
 - ~~e. Bushel Baskets. The player tosses balls into a bushel type basket mounted on a stationary backdrop at a fixed angle. The balls shall stay in the basket to win. All rim shots, where the ball hits the rim and stays in, shall be allowed.~~
 - ~~f. Cat Ball Toss (Star/Diamond Toss). The player tosses balls into a simulated cat's mouth or a round, diamond or star shaped hole to win.~~
 - ~~g. Ping Pong Toss. The player tosses ping pong balls into dishes, saucers, cups or ashtrays floating in water. A predetermined number of balls shall remain in the dishes, saucers, cups or ashtrays for the player to win. The dishes, saucers, cups or ashtrays shall not be stacked on top of each other but shall be in the water and floating at water level.~~
 - ~~h. Break the Plate/Bottle. The player tosses or throws balls at a plate, phonograph record or bottle. The type of prize won is determined by the number of targets broken by the player.~~
 - ~~i. Punk Rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats shall be filled with sawdust, Styrofoam, cotton or other material which provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats shall not exceed three inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge as posted by the operator.~~
 - ~~j. Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface shall at all times be smooth.~~
 - ~~i. 3-Pin. The player rolls a specified number of balls down an alley with the object of knocking over all three pins set up on designated spots in a triangle. The triangle shall be set so the ball may knock down both pins if the player's roll is between the pins. The alley shall be marked with a grid for guidance and spots designating where the pins shall be set. The designated spots shall be no larger than the base of the pins. The alley shall be a smooth, level surface no more than six feet in length.~~
 - ~~ii. Sidewinder. The object of the game is for the player to control a ball rolling down a downward slanted, multi-curved alley by tilting the alley to one side or the other with a steering wheel. The player wins by putting the ball through a hole at the end of the alley without the ball falling off the alley. Siderails may be used to help the player control the ball. The alley shall be a smooth, flat surface with a downward angle of no more than 15 degrees.~~
 - ~~k. Skee Ball. The player rolls balls up the mechanical alley into numbered targets. A mechanical scorer or computer adds up the score to match a predetermined prize. The alley surface shall be smooth at all times.~~
 - ~~l. Bank Ball. The object of the game is for the player to bank a ball off the front surface of a board and into a basket located under the board. The ball shall only hit off the front of the board. The board shall be a sandwich board no higher than six feet. There shall be two chains, each attached to the outside of the board legs, to secure the board when it is opened to its standing position. The basket shall be secured to the legs of the sandwich board a minimum of nine inches directly out from the legs of the board. The board surface shall be smooth.~~
 - ~~m. Kiddie Toss. The player throws a velero covered ball at a predetermined velero target to win. Balls thrown which do not stick to the target shall be replayed.~~
4. ~~Shooting Games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirement of the local city or county ordinances shall be observed by the operator and player. The target may be stationary or mobile.~~
- ~~a. Shoot Out The Star (Machine Gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at the star shaped target. The player shoots out all of the star target surface to win. The star shall not be more than one and one quarter inch from point to point.~~
 - ~~b. Water Racer. The group game involves competition with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water striking the target causes a balloon to inflate or advances an object to ring a bell. The player bursting the balloon or ringing the bell first is the winner.~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- e. ~~Rapid Fire. This group game involves competition among players similar to the water racer. The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score and the first player to reach a predetermined score is the winner.~~
- d. ~~Cork Gallery. The player uses a cork gun to shoot at targets located on a shelf. The player knocks the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf or by the number of targets knocked over or off the shelf. The base of each target shall be uniform front and rear.~~
- e. ~~Gun Ball. The player shoots a ball at stationary targets located in the stand. The player wins by knocking down all the targets. The balls shall be of identical size and weight and the targets shall be of identical size and weight.~~
- 5. ~~Coin Pitchers. These games are conducted by the player using a token or coin of U.S. denomination and then pitching or tossing the coin to land and remain on or in a target within the stand. The target may be stationary or mobile.~~
 - a. ~~Spot Pitch (Lucky Strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin shall either touch or stay inside of a spot to win a prize.~~
 - b. ~~Plate Pitch. The player pitches a coin onto a glass plate. If the coin remains on the plate, then the player wins a prize as designated.~~
 - e. ~~Glass Pitch (Bowl). The player pitches a coin into or onto bowls, ashtrays, dishes, or glasses. If the coin remains in one of the top "target" glass items, then the player wins that item.~~
- 6. ~~Miscellaneous Games.~~
 - a. ~~Tip Em Up Bottle. The player is provided with a pole and a string which has a hoop or ring attached at the end. The player, using the pole with a hoop or ring, raises a bottle lying on its side to an upright position to win.~~
 - b. ~~Hi-Striker. The player, using a wooden or metal maul, strikes a lever target which causes a metal weight to rise on a guide line or track and ring a bell. The player rings the bell a predetermined number of times to win a prize.~~
 - e. ~~Rope Ladder. The player climbs a rope ladder, which is anchored at both ends by a swivel, and rings a bell or buzzer to win a prize.~~
 - d. ~~Whac-A-Mole. The player, with a rubber mallet, whacs (hits) as many moles as possible in his 5 hole target area. The animated "moles" pop up and down at random through the holes, avoiding getting whac'd by the player. The first player to hit a predetermined number of moles wins.~~
 - e. ~~Dip Bowling Game. The player rolls a bowling type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.~~
 - f. ~~Speedball Radar Game. The player throws a specified number of balls past a radar device to establish speed and to enable the player to estimate the speed at which the last ball thrown will pass through the radar device. The player wins a prize if he accurately estimates the speed of the last ball thrown. The radar device shall be mounted and stationary.~~
 - g. ~~Horse Race Derby. The player advances his horse by shooting or rolling a ball in a target area. The faster and more skillfully one shoots or rolls his ball into the target area, the faster his horse will run. The first horse to cross over the finish line wins.~~
 - h. ~~Shuffleboard. The player pushes pucks down a shuffleboard alley to knock over the pins at the end of an alley. The player wins by knocking down all the pins.~~
 - i. ~~Bean Bag. The player tosses or throws a bean bag or simulated bean bag at cans, bottles or other objects on a raised platform. The player wins a prize when he either knocks the objects off the raised platform or tips the targets over.~~
 - j. ~~Soccer Kick. The player kicks soccer balls through holes in the target area to win.~~
 - k. ~~Pool Table. The player using a pool cue stick and solid white cue ball is given "x" number of shots to shoot at "x" number of multicolored balls into targets or pockets on a pool table. The number of shots and multicolored balls used shall be based on the type of prize to be won. The first shot is to break or separate the multicolored balls from their racked position on the table. During the first shot, any multicolored balls falling into any targets or pockets shall count for the player's total score. After the first shot, the player shall specify which colored ball or balls shall be shot at and the target or pocket where the ball or balls shall end up in. If, after the first shot, the specified ball or balls shot at do not fall into the target or pocket as specified, the player loses the game. If the solid white cue ball falls into a target or pocket on any shot, the player loses the game. The player wins the game when all balls on the table are shot into the specified pockets on successive shots. The pool table surface shall be smooth, level and in good repair at all times.~~
 - l. ~~Put Out The Light. The player drops five metal plates measuring four inches in diameter onto a target surface measuring six and three eighths inches in diameter in an effort to completely cover the designated target surface. The plates are dropped from a designated height, which is controlled by an electric beam and buzzer. The buzzer sounds to alert the player and agent of any height violation. If the height is violated and the plate is dropped, the play ends. Once dropped, the plates are not moved until a final determination of a winner is made. The player wins when the surface is completely covered by the plates. Surface and disk size changes may be made in proportion to the measurements listed and are subject to the approval of the Arizona State Fair Games Inspector.~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- m. Fisharama. The player uses a magnet attached on a line on a pole to catch a predetermined target which is visually distinguishable from the other targets floating in a water filled elliptic trough. The player wins by catching the predetermined target. The magnets shall be capable of sticking to and picking up each of the potential targets.
- n. Flippgame. The player propels an object into a target by using a mechanical launching device. The player positions the object on the launching device and then propels the object by striking the device with a rubber mallet. The player wins by putting the object in the target. The target may be stationary or mobile.
- o. Waeky Wire. The player passes a metal wire with a minimum one inch circular opening in the middle of the wire down a curved wire moving clockwise during play. The player wins by passing the wire down to the base of the moving curved wire without touching the moving curved wire. A buzzer shall signify a touch by a player.

A. In General. A player tosses each hoop or ring over a target. The object of the game is for the hoop or ring to land on the target, with a portion of the target passing through the hoop or ring.

B. Specific Standards. A concessionaire shall:

1. Advise the player regarding the extent of the target that must pass through the hoop or ring; and
2. Ensure that hoops or rings of the same color at a location are the same size or advise the player of different sizes by posting signs or using color codes to denote different sizes.

R3-12-202. Prize limit Dart Games

A. Concessionaires with choice prizes may request authorization by the Arizona State Fair Games Inspector or the Midway Coordinator to limit a player to win one choice prize per game stand each day of the Fair. The concessionaire's request shall be made prior to the opening of the Fair and shall be authorized if:

1. The wholesale value of the choice prize is \$25.00 or more.
2. The choice prize is won by successfully performing the game correctly once.

B. If authorized, the concessionaire shall post a sign at the game stating the choice prize limit.

C. Choice prize is defined as the most valuable prize with a wholesale value of \$25.00 or more offered at the game.

A. General Standards. A concessionaire shall:

1. Ensure that the target area for metal-tip dart games is made of material that will accept and retain a metal tip dart;
2. Use darts with metal, velcro, or suction cup tips;
3. Ensure that darts are thrown by hand or propelled by a mechanical device;
4. Place the target at the back of the location, at least 3 feet but not more than 15 feet from the foul line;
5. Ensure that the target is stationary at all times; and
6. Construct the location in a manner that prevents darts from reaching adjoining locations or aisles.

B. Game Descriptions and Specific Standards

1. Balloon or Balloon Smash. The targets are inflated balloons. A player throws one or more darts to burst a predetermined number of balloons. If the player bursts the predetermined number of balloons with the darts, the player wins the designated prize.
2. Dart Throw. The targets are shapes of various sizes located on the target area. A player throws or propels darts individually at a target. If the player hits a predetermined target and the dart remains in or on that target, the player wins the designated prize.
3. Tic-Tac-Toe Dart. The target is a tic-tac-toe board located on the target area. If a player sticks a dart in each of three adjacent spaces on the tic-tac-toe board, either vertically, horizontally, or diagonally, the player wins the designated prize.
4. Add 'Em Up Darts. The target consists of numbered squares located on the target area. A concessionaire awards prizes based on the total score, calculated by adding the numbers on each square holding a dart. If a dart is stuck on a line, a player may throw the dart again. The player may independently calculate the score of the darts thrown.

R3-12-203. Concession safety Ball Toss Games

No concession shall be operated in a manner which presents a hazard to the safety of the patron or public in general. No equipment shall be used which is not in good safe operating condition. Material used in the construction of the concession shall be in good safe condition to meet the concession's intended use. If the Arizona State Fair Games Inspector or an employee designated by the Executive Director believes there is a hazard in either the operation of the concession, the equipment being used, the construction of the concession or any part thereof, the concession shall be closed until corrections are made to the satisfaction of the Arizona State Fair Games Inspector or the designated employee.

A. General Standards. A concessionaire shall ensure that:

1. Each ball used at a specific stand is the same weight and size.
2. Targets are either of identical weight and size or color-coded to show target differences, or describe any target difference on a sign.

Arizona Administrative Register
Notices of Proposed Rulemaking

B. Game Descriptions and Specific Standards

1. Milk Bottle. A player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off a raised platform as designated by the concessionaire. Concessionaires may vary the number of bottles and balls used in each game. A concessionaire shall ensure that:
 - a. The bottles are constructed of wood, metal, plastic, or a combination of these materials;
 - b. There are no floating or loose weights in bottles; and
 - c. The weight of each bottle does not exceed 7.5 pounds.
2. Milk Can. If a player tosses a ball into the opening of a milk can, cone, or similar object, the player wins the designated prize.
3. Football and Tire. If a player tosses or throws a football through a stationary tire or hoop, the player wins the designated prize.
4. Basketball and Hoop. If a player tosses or throws a basketball through a basketball or similar hoop, the player wins the designated prize.
5. Bushel Basket. If a player tosses each ball into a bushel basket or similar object mounted on a stationary backdrop at a fixed angle, and the ball stays in the basket, the player wins the designated prize. If a ball hits the rim and stays in the basket, the player wins the designated prize.
6. Cat, Circle, Star, or Diamond. If a player tosses each ball into a simulated cat's mouth or a round, diamond-shaped, or star-shaped hole, the player wins the designated prize.
7. Ping Pong Ball and Floating Target. A player tosses each ping pong ball into a dish, saucer, cup, or ashtray floating in water. If a predetermined number of balls remain in the dishes, saucers, cups, or ashtrays, the player wins the designated prize. A concessionaire shall ensure that dishes, saucers, cups, or ashtrays are:
 - a. Not stacked on top of each other; and
 - b. In the water and floating at water level.
8. Break the Plate, Record, or Bottle. A player tosses or throws balls at a plate, phonograph record, or bottle. The player wins a designated prize based upon the number of targets broken.
9. Punk Rack. The targets for this game are rows of dolls or cats on a ledge at the back of the location. If the player knocks the correct number of dolls or cats over or off of the ledge, the player wins the designated prize. A concessionaire shall ensure that:
 - a. The dolls or cats are filled with sawdust, polystyrene, cotton, or a similar material;
 - b. The hair protruding from the side of the dolls or cats does not exceed 3 inches.
10. Rolldown. The player rolls a specified number of balls down an alley. The object of the game is to place the balls in numbered slots at the end of the alley. The concessionaire calculates the total score by adding the numbers of the slots that contain a ball at the end of the game. If a player achieves a score above or below a predetermined number, the player wins the designated prize. A concessionaire shall ensure that the alley surface is smooth.
 - a. 3-Pin. The player rolls a specified number of balls down an alley. The object of the game is to knock over all three pins sitting on designated spots in a triangle. A concessionaire shall:
 - i. Set the triangle with the two front pins on a line that is perpendicular to a line coming from the player.
 - ii. Set the front pins so the ball may knock down both pins if the player's roll is between the pins.
 - iii. Mark the alley with a grid and spots for the pins.
 - iv. Ensure that the designated spots are no larger than the base of the pins.
 - v. Ensure that the alley is a smooth, level surface no more than 6 feet long.
 - b. Sidewinder. The object of the game is for the player to control a ball rolling down a downward-slanted, multi-curved alley by tilting the alley to one side or the other with a steering wheel. The player wins by putting the ball through a hole at the end of the alley without the ball falling off the alley. Side rails may be used on part of the alley to help the player control the ball. A concessionaire shall ensure that the alley is a smooth, flat surface with a downward angle of no more than 15 degrees.
11. Skee Ball. A player rolls balls up a mechanical alley into numbered targets. A mechanical scorer or computer calculates the score to determine whether the player wins the designated prize. A concessionaire shall ensure that the alley surface is smooth.
12. Bank Ball. The object of the game is for a player to bank a ball off the front surface of a sandwich board into a basket located in front of the board's legs. The player shall use only the front surface of the board. A concessionaire shall:
 - a. Ensure that the board is a sandwich board that, together with its legs, is not more than 6 feet high;
 - b. Ensure that there are two chains attached to the legs to secure the board when it is opened to the standing position.
 - c. Secure the basket to the legs of the sandwich board so that the basket is a minimum of 9 inches in front of the board's legs.
 - d. Ensure that the board surface is smooth.
13. Kiddie Toss. A player throws a velcro-covered ball at a velcro target. If the player hits the target, the player wins the designated prize. If a ball does not stick to a target, the player may throw again with a different ball.

Arizona Administrative Register
Notices of Proposed Rulemaking

R3-12-204. ~~Posting of fees and rules~~ Shooting Games

- ~~A. Every game shall have conspicuously posted during all times of operation a sign stating the cost of play, how the game is played, and exactly what is required in order to win each prize offered.~~
- ~~B. The sign shall be of a permanent material such as wood, metal, masonite or similar sturdy material. The lettering shall be plain, of a contrasting color, and at least two inches in height.~~
- ~~C. No more than one price shall be charged to play a game, except that a separate price may be charged for children. If a separate children's price is charged, a posted sign shall state the maximum age for the children's price.~~
- A. In General.** A player uses a weapon to shoot a target at the rear of the location. The target may be stationary or mobile.
- B. Game Descriptions and Specific Standards**
1. Shoot-Out-The-Star or Machine Gun. A concessionaire provides a player with an automatic air pellet gun and 100 pellets to shoot at a star-shaped target. If the player shoots out the entire target, the player wins the designated prize. The concessionaire shall ensure that the star is not more than 1 and 1/4 inch from point to point.
 2. Water Racer. The game involves group competition. A player wins a prize based on the number of players competing. Each player, using a water pistol, shoots water into a target. Water striking the target causes a balloon to inflate or advances an object to ring a bell. The player who bursts the balloon or rings the bell first is the winner.
 3. Rapid Fire. The game involves group competition. Each player uses an electronic pistol to shoot at a target. Hits on the target increase the player's score. The first player to reach a predetermined score is the winner.
 4. Cork Gallery. A player uses a cork gun to shoot at targets located on a shelf. If the player knocks a target over or off the shelf, the player wins a prize. The prize is based on the target knocked over or off the shelf or on the number of targets knocked over or off the shelf. A concessionaire shall ensure that the base of each target has a uniform shape, front and rear.
 5. Gun Ball. A player shoots balls at stationary targets in the location. The player wins by knocking down all the targets. A concessionaire shall ensure that:
 - a. The balls are of identical size and weight; and
 - b. The targets are of identical size and weight.

R3-12-205. ~~Prizes~~ Coin Games

- ~~A. All prizes shall be displayed at all times the game is open to the public. No prizes shall be given which are not displayed.~~
- ~~B. No game shall award cash prizes.~~
- ~~C. No concessionaire or agent shall buy back for cash or through any combination of prizes, articles, tickets, numbers or money exchange, any prizes won by a player at the fair.~~
- ~~D. The determination of appropriate merchandise to be offered as prizes shall be based on:~~
- ~~1. The safety of the merchandise not only to the player, but persons who may come in contact with the merchandise.~~
 - ~~2. The legality of the merchandise.~~
 - ~~3. The value of the merchandise.~~
- ~~E. Prohibited prizes are:~~
- ~~1. Weapons of any kind such as firearms, knives, whips, martial art items, bike chains, studded jewelry and accessories, water pistols or guns, pea or bean shooters.~~
 - ~~2. Fireworks and bang caps or bang snaps.~~
 - ~~3. Hand cuffs and fingercuffs.~~
 - ~~4. Stretch Bottles.~~
 - ~~5. Any obscene items.~~
 - ~~6. Eyeglasses other than sunglasses.~~
 - ~~7. Medicine or drugs of any kind.~~
 - ~~8. Fowl and animals except goldfish.~~
- A. In General.** A player uses a token or coin of U.S. denomination. The player pitches or tosses the coin so that it lands and remains on or in a target within the location. The target may be stationary or mobile.
- B. Game Descriptions and Specific Standards**
1. Spot Pitch or Lucky Strike. A player pitches a coin at colored spots located on a table in the center of the location. If the player can pitch the coin so that it either touches or stays inside of a spot, the player wins the designated prize.
 2. Plate Pitch. A player pitches a coin onto a glass plate. If the coin remains on the plate, the player wins the designated prize.
 3. Glass Pitch. A player pitches a coin into or onto bowls, ashtrays, dishes, or glasses. If the coin remains in one of the top "target" glass items, the player wins that item.

R3-12-206. ~~Contracts and permits~~ Other Games

- ~~A. No person shall operate any concession at the fair without first obtaining a contract from the Arizona State Fair.~~

Arizona Administrative Register
Notices of Proposed Rulemaking

- ~~**B.** Any persons may request an application for space at the Arizona State Fair. Applications for a games concession shall include the name of the game, a description of the game, space requirements, the exact location for all game components, the owner's name and address, and a current photograph of the stand.~~
- ~~**C.** Contracts issued are nontransferable. The contract for each concession shall be issued only to the owner or lessee of the concession.~~
- ~~**D.** A schedule of fees for amusement game contracts shall be based on:~~
- ~~1. Front stand games. Footage requirements of the front of the game space times "x" amount of dollars equals the cost plus insurance costs and utility costs.~~
 - ~~2. Center stand games. Footage requirements of the front and of one side of the game space times "x" amount of dollars equals the cost plus insurance costs and utility costs.~~
 - ~~3. All footage requirements shall be based on a ten-foot minimum.~~
- ~~**E.** One contract shall be required for each separate game at the fair, except when:~~
- ~~1. All of the units of play are in the same location.~~
 - ~~2. The units of play are not separate from each other by any wall, canvas or other partition.~~
 - ~~3. The games are identical.~~
 - ~~4. The prizes are identical.~~
 - ~~5. The price is the same.~~
 - ~~6. When these requirements are met, up to ten units may be included under one fair contract.~~
- ~~**F.** All concessions shall display in a conspicuous place the Arizona State Fair concession permit for operation. The permit shall be in view for the Director, Arizona State Fair Games Inspector or Midway Coordinator to locate without disrupting the concession or game. Failure to post the permit shall result in the shutdown of the game until such permit is properly displayed.~~
- ~~**G.** All concessionaires and agents shall operate during the hours established by the Director or his designee and the Midway Coordinator.~~
- ~~**H.** All merchandise offered as prizes shall be listed on the concessionaire's contract.~~
- ~~**I.** Game charges to the player, both adult and child's prices, shall be listed on the concessionaire's contract.~~
- ~~**J.** Any changes of contracted games shall be designated in an amended contract.~~
- ~~**K.** The misrepresentation of game ownership, operation or appearance on the applications or pictures shall be grounds for the cancellation of the concession's contract and the immediate removal of equipment and the operation of the game from the Arizona State Fair.~~
- A.** Tip-Em-Up Bottle. A concessionaire provides a player with a pole that has a string attached to it at one end. A hoop or ring is attached to the other end of the string. If the player, using this "fishing" pole with a hoop or ring, can raise a bottle lying on its side to an upright position, the player wins the designated prize.
- B.** Hi-Striker. A player, using a wooden or metal maul, strikes a lever that causes a metal weight to rise on a guide line or track and ring a bell. If the player rings the bell a predetermined number of times, the player wins the designated prize.
- C.** Rope Ladder. A player climbs a rope ladder that is anchored at both ends, but swivels. If the player is able to ring the bell or buzzer, the player wins the designated prize.
- D.** Whac-A-Mole. A player hits as many moles as possible with a rubber mallet in the five-hole target area. The animated moles pop up and down at random in the holes. The first player to hit a predetermined number of moles wins the designated prize.
- E.** Speed Bump Bowling. A player rolls a bowling ball or similar ball over a hump in the track. If the player rolls the ball to the other side of the hump and the ball remains there, the player wins the designated prize.
- F.** Speedball Radar. A player throws a specified number of balls past a radar device to establish the speed at which the ball is thrown. This enables the player to estimate the speed of the ball. If the player accurately estimates the speed of the last ball thrown, the player wins the designated prize. A concessionaire shall ensure that the radar device is mounted in a stationary position.
- G.** Horse Race Derby. A player advances a horse by shooting or rolling a ball into a target area. The faster and more skillfully the player shoots or rolls the ball into the target area, the faster the player's horse will run. If the player's horse is the first to cross the finish line, the player wins the designated prize.
- H.** Shuffleboard. A player pushes pucks down a shuffleboard alley to knock over pins at the end of the alley. If the player knocks down all of the pins, the player wins the designated prize.
- I.** Beanbag. A player tosses or throws a beanbag or simulated beanbag at cans, bottles, or other objects on a raised platform. If the player knocks one or more objects off of the raised platform or tips one or more targets over, the player wins the designated prize.
- J.** Soccer Kick. If a player kicks a soccer ball through a hole in the target area, the player wins the designated prize.
- K.** Pool Table. A player using a pool cue and solid white cue ball is given a fixed number of chances to shoot a fixed number of multicolored balls into targets or pockets on a pool table. The number of chances and multicolored balls used is based on the type of prize offered. The first shot is to break or separate the multicolored balls from their racked position on the table. During the first shot, any multicolored balls that strike targets or fall into pockets count toward the player's total

Arizona Administrative Register
Notices of Proposed Rulemaking

score. After the first shot, the player shall specify the colored ball or balls and the target or pocket for the ball or balls. If, after the first shot, the specified ball or balls do not strike the target or fall into the pocket specified, the player loses the game. If the solid white cue ball strikes a target or falls into a pocket on any shot, the player loses the game. If the player shoots all balls on the table into the specified targets or pockets using the allotted number of successive shots, the player wins the designated prize. A concessionaire shall ensure that the pool table surface is smooth, level, and in good repair.

- L.** Put Out The Light. A player drops five metal plates measuring 4 inches in diameter onto a target surface measuring 6 and 3/8 inches in diameter in an effort to completely cover the target surface. The player drops the plates from a designated height, marked by an electric beam that triggers a buzzer. The buzzer sounds to alert the player and concessionaire of any height violation. If the buzzer sounds and the player drops a plate, the player loses the game. Once dropped, plates are not moved until the concessionaire makes a final determination of a winner. If the player completely covers the surface with the plates, the player wins the designated prize. The concessionaire may change surface and disk size in proportion to the measurements listed above. These changes are subject to the approval of the Arizona State Fair Games Inspector.
- M.** Fisharama. A concessionaire provides a player with a pole that has a string attached to it at one end. A magnet is attached to the other end of the string. The player uses the magnet to catch a predetermined target that is visually distinguishable from other targets floating in a water-filled elliptic trough. If the player catches the predetermined target, the player wins the designated prize. The concessionaire shall ensure that the magnets can stick to and pick up each of the potential targets.
- N.** Flipgame. A player propels an object into a target by using a mechanical launching device. The player positions the object on the launching device and then propels the object by striking the device with a rubber mallet. If the player flips the object into the target, the player wins the designated prize. The target may be stationary or mobile.
- O.** Wacky Wire. A player passes a metal wire with a minimum 1 inch circular opening in the middle of the wire down a curved wire moving clockwise during play. The player wins by passing the wire down to the base of the moving curved wire without touching the moving curved wire. A buzzer signifies any touch by a player.

R3-12-207. ~~Concessionaire responsibility~~ Repealed

- A.** ~~Every concessionaire shall be responsible for all the actions of his agents while the agents are working a concession at the Fair or living on the grounds, including responsibility for their agent's compliance with this Chapter and the laws of the State of Arizona.~~
- B.** ~~Concessionaires shall be responsible for supplying uniforms for their agents. The uniforms shall be neat, clean and well-kept in appearance during the hours the Fair is in operation. Agents shall be in uniform all hours the Fair is in operation for identification by Fair patrons, officials and concessionaires.~~

R3-4-208. ~~Conduct~~ Repealed

~~Concessionaires or their agents shall not molest or hinder the public by touching, grabbing or using abusive or obscene language.~~

R3-4-209. ~~Sales location~~ Repealed

~~For the purpose of maintaining an orderly movement of fair patrons, no concessionaire or agent shall operate or sell more than four feet from his concession.~~

R3-4-210. ~~Sound control~~ Repealed

~~The concessionaire or agent operator of a loud speaker at the Fair shall control the volume so as not to interfere with other concessions or become a nuisance to fair patrons. For the games area, the maximum decibel level is 90. All sound shall be controlled by the Arizona State Fair Games Inspector and Midway Coordinator.~~

R3-12-211. ~~Advertising~~ Repealed

~~False or misleading advertising by banner, word of mouth or otherwise is prohibited.~~

R3-12-212. ~~Height and line designation~~ Repealed

~~All concessionaires and agents shall designate a line behind which the players shall stand to play the game. If the game is trailer mounted, the Arizona State Fair Games Inspector shall determine the height of the base on which the game is set, based upon the safety considerations of R3-12-203 and the fairness to the player of the height of the game.~~

ARTICLE 3. CONCESSIONAIRES

R3-12-301. Safety

- A.** A concessionaire shall not:
 - 1. Operate a concession in an unsafe manner; or
 - 2. Use equipment that is not in good, safe operating condition.
- B.** A concessionaire shall use material in the construction of the concession that is in good, safe condition for the concession's intended use.

Arizona Administrative Register
Notices of Proposed Rulemaking

- C. If an Arizona State Fair Games Inspector believes there is a hazard in concession operation, equipment, or construction, or any component of the equipment or construction materials, the Inspector shall close the concession until satisfied that the concessionaire has corrected the hazardous condition.

R3-12-302. Posting Prices and Game Standards

- A. For every game a concessionaire shall conspicuously post, during all times of operation, a sign stating the price of the game, clear game instructions and standards, and the exact task the player is required to successfully complete to win the designated prize.
- B. The concessionaire shall use a sign made of a sturdy material, such as wood, metal, masonite, or a similar material, and block lettering of a contrasting color, at least 2 inches high.
- C. The concessionaire shall not charge more than one price to play a game, except that the concessionaire may charge a separate price for children. If the concessionaire charges a separate price for children, the concessionaire shall post a sign that states the maximum age for the children's price.

R3-12-303. Prizes

- A. A concessionaire shall display all prizes while the game is open to the public.
- B. A concessionaire shall not:
1. Award prizes that are not displayed;
 2. Award cash prizes;
 3. Buy back for cash or any combination of prizes, articles, tickets, numbers, or other medium of exchange, any prizes won by a player at the Fair.
 4. Offer the following merchandise prizes:
 - a. Weapons of any kind, such as firearms, knives, whips, martial art items, bike chains, studded jewelry and accessories, water pistols or guns, pea or bean shooters;
 - b. Fireworks of any kind;
 - c. Handcuffs or handcuffs;
 - d. Melted glass bottles;
 - e. Items that would be inconsistent with the state's interest in providing entertainment for families and children;
 - f. Eyeglasses, other than sunglasses;
 - g. Medicine or drugs of any kind; or
 - h. Fowl or animals, except goldfish.
- C. An Arizona State Fair Games Inspector may prohibit other prizes, based on prize or merchandise:
1. Safety;
 2. Legality; or
 3. Value.

R3-12-304. Valuable Prize Limit

- A. A concessionaire with a valuable prize shall request authorization from the Board to limit the number of valuable prizes any player can win to one prize from each game location during each day of the Fair. The concessionaire shall make the request before the Fair opens. The Board shall authorize the valuable prize limit if:
1. The wholesale value of the prize is \$25.00 or more; and
 2. The prize is won by successfully completing the game's activity once.
- B. If authorized, the concessionaire shall post a sign at the game location that indicates the valuable prize limit.

R3-12-305. Lease Standards

- A. A person shall not operate a concession at the Fair without first leasing space for the concession from the Board.
- B. Any person may apply to lease space at the Fair for a game concession. An applicant shall send a letter to the Board that contains the name of the game, a description of the game, space requirements, the exact location for all game components, the applicant's name and address, and a current photograph of the stand. A lease is nontransferable. The lease for each concession applies only to the concessionaire who enters into the lease.
- C. The Board shall determine the rent to be paid under each game concession lease and ensure that this dollar amount is specified in the lease. For front stand games, the rent is computed by multiplying the footage requirements for the front of the game space by a dollar amount determined by the Board and adding any insurance and utility costs. For center stand games, the rent is computed by multiplying the footage requirements for the front and one side of the game space by a dollar amount determined by the Board and adding any insurance and utility costs. The Board shall not use less than a ten-foot minimum footage requirement in its rent calculations.
- D. A separate lease is required for each game concession at the Fair unless:
1. All activities of amusement are in the same location;
 2. The activities of amusement are not separated by a wall or partition;
 3. The activities of amusement are identical;

Arizona Administrative Register
Notices of Proposed Rulemaking

- 4. The prizes for each activity of amusement are identical; and
- 5. The price for each activity of amusement is identical;
- E.** Upon consideration of the factors in subsections (D)(1) through (D)(5), the Board may include up to 10 activities of amusement under one lease.
- F.** A concessionaire shall operate during the hours specified in the lease.
- G.** An applicant shall provide a document, incorporated by a reference in the lease, that lists the dollar value and total number of each type of prize merchandise that will be offered at the Fair.
- H.** An applicant shall provide a document, incorporated by a reference in the lease, that lists all prices that will be charged for merchandise, services, games, or other entertainment provided to patrons of the Fair.
- I.** The Board and the concessionaire may mutually agree to modify the terms of a lease and shall memorialize any modification in an amended lease.
- J.** The Board shall not lease space to an applicant if the applicant makes a material misrepresentation on an application or in documents submitted with an application. If a concessionaire has made a material misrepresentation to the Board, the Board shall cancel the concessionaire's lease, using the applicable provision in the lease, and remove the concession from the Fair.

R3-12-306. Uniforms

A concessionaire shall supply uniforms for agents. A concessionaire shall ensure that agents keep the uniforms in a clean and serviceable condition and wear the uniforms during the hours of the Fair.

R3-4-307. Concession Location

A concessionaire shall not sell merchandise or services, conduct games, or provide other entertainment more than 4 feet from the concession location.

R3-4-308. Sound Control

A concessionaire operating any loudspeaker at the Fair shall control the volume so that the loudspeaker does not interfere with other concessions or adversely affect Fair patrons. For the game concession area, the maximum decibel level for a loudspeaker is 90.

R3-12-309. Height and Line Designation

A concessionaire shall designate a line behind which players stand to play a game. If the game is trailer mounted, an Inspector shall designate the height of the base on which the game is set, based upon safety considerations of R3-12-301 and fairness to the player.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

PREAMBLE

- | | |
|--|--|
| <u>1. Sections Affected</u>
R12-5-2303 | <u>Rulemaking Action</u>
Amend |
| <u>2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 37-213(E)

Implementing statutes: A.R.S. §§ 27-234(J), 27-567(F), 37-132(A)(7), 37-214, 37-215, 37-236(C), 37-285(F), 37-312(L), 37-321.01(E), 37-331.01(C), 37-334(E), 37-335, and 37-1127(C) | |
| <u>3. List of all previous notices appearing in the Register addressing the rules:</u>
Notice of Rulemaking Docket Opening: 8 A.A.R. 1183, March 22, 2002 | |
| <u>4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>
Name: Rebecca A. Good

Address: 1616 W. Adams, Room 313
Phoenix, AZ 85007

Telephone: (602) 542-2630 | |

Arizona Administrative Register
Notices of Proposed Rulemaking

Fax: (602) 542-2590
E-mail: rgood@lnd.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The rule is being amended as a result of a five-year review report approved by the Governor's Regulatory Review Council in July 2000 to address an inconsistency with the requirements of Arizona's Administrative Procedure Act (APA) regarding the number of days advance notice is given to the parties of a hearing before the Board of Appeals. Currently, R12-5-2302 requires 20 days advance notice of the hearing, while the APA requires 30 days notice. The rule is being amended to require 30 days advance notice of hearings before the Board of Appeals to comply with the statutory requirements of the APA and to ensure consistency and fairness in administrative proceedings before the Board of Appeals.

6. Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material.

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. Objective of the rulemaking

The rules are being amended as a result of a five-year review report approved by the Governor's Regulatory Review Council in July 2000 to address issues of conformity with the statutory requirements of the Administrative Procedure Act.

B. Summary of economic, small business, and consumer impact information

The primary economic impact of the rule change is the additional notice time a party to an administrative hearing before the Board of Appeals will receive. The rule change will make the Board's rules consistent with Arizona's Administrative Procedure Act, which will be a benefit to the Board, small businesses, and consumers. The Board does not anticipate any monetary impact to the Board, small businesses, or consumers from the rule change.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Rebecca A. Good
Address: 1616 W. Adams, Room 313
Phoenix, AZ 85007
Telephone: (602) 542-2630
Fax: (602) 542-2590
E-mail: rgood@lnd.state.az.us

10. The time, place, and nature of proceedings for making, amending, or repealing the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted to the address in item #4 until 5:00 p.m. on August 8, 2002. A proceeding at which oral comments may be made will be held as follows:

Date: August 8, 2002
Time: 9:00 a.m.
Place: Arizona State Land Department Board of Appeals
1616 W. Adams, Room 321
Phoenix, AZ 85007

The record on this rulemaking will close at 5:00 p.m. on August 8, 2002.

Arizona Administrative Register
Notices of Proposed Rulemaking

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporation by reference and their locations in the rules:

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 23. BOARD OF APPEALS

Section

R12-5-2303. Notice of Hearing

ARTICLE 23. BOARD OF APPEALS

R12-5-2303. Notice of Hearing

- A. Setting a hearing date. Within ten days from the date of receiving the ~~Notice~~ notice of ~~Appeal~~ appeal pursuant to ~~under~~ A.R.S. § 37-215, the Clerk shall set a date for the hearing in compliance with A.R.S. § 37-215.
- B. Service of a notice of hearing. At least ~~twenty~~ thirty days ~~prior to~~ before the date of the hearing, the Clerk shall serve notice of the hearing by certified mail or personal service, to appellant, the Department, and ~~any~~ all other ~~party~~ parties to the appeal.
- C. Contents of a notice of hearing. The notice shall contain:
 1. A statement identifying the Board, the parties, and the ~~matter to be heard~~ matters asserted;
 2. A statement of the date, time, and place of the hearing;
 3. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 4. A statement advising the parties of the requirements of R12-5-2305; and
 5. A reference to the particular Sections of the statutes and rules involved.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

PREAMBLE

1. Sections Affected
R18-9-A304
- Rulemaking Action
New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. §§ 49-333 and 49-335
Implementing statutes: A.R.S. §§ 49-332 and 49-333
3. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 8 A.A.R. 939, March 8, 2002
4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Shirley J. Conard
Address: Arizona Department of Environmental Quality
3033 N. Central Avenue, M0401A-422
Phoenix, AZ 85012-2809

Arizona Administrative Register
Notices of Proposed Rulemaking

Telephone: (602) 207-4632 (Metro-Phoenix area)
(602) 771-4632 (after July 8, 2002) or
1-800-234-5677, ext. 4632 (other areas)

Fax: (602) 207-4674

E-mail: conard.shirley@ev.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

A drywell is defined in A.R.S. 49-331(3) as “a well which is a bored, drilled, or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water.” Drywells are intended to provide quick and efficient disposal of stormwater by providing a conduit for fluids to bypass surface ponding caused by slow infiltration through the soil column. Drywells are exempt from the requirement to obtain an Aquifer Protection Permit (APP) as long as they only receive stormwater. However, it is not uncommon for drywells to be located in areas where there is a potential for spills of pollutants, including hazardous substances, to enter the drywell thus posing a threat to groundwater quality. If contaminated wastewater is discharged to a drywell, minimal dispersion and attenuation of hazardous substances occurs creating a much greater risk to groundwater quality. Since program inception, individual APPs have been issued for drywells at facilities where hazardous substances are used, stored, loaded, or treated to ensure that groundwater quality is protected.

When the Department adopted the Unified Permit Rule (new Aquifer Protection Permit rule) in January 2001, it contained a Type 2 general permit, the 2.01 General Permit for Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated. A Type 2 General Permit requires that a Notice of Intent to Discharge be filed with the Department before the applicant is authorized to discharge. The permittee need only provide sufficient information to ensure compliance with the terms of the specific general permit. The authorization to discharge under the general permit is effective on the date the Department receives the complete NOI. The general permit requirements were based on the guidelines used by the Water Permits staff for previously issued individual APPs for these discharging facilities.

Drywells represent a special problem at service stations because they provide immediate and rapid infiltration of stormwater to the aquifer at a location where motor fuel spills also may occur. As a direct “pipeline” to groundwater, the drywell conducts the pollutants deep into the subsurface without any possibility of treatment or removal by the overlying soils. This danger can be minimized, though, because designs are available for drywell systems that remove, intercept, or collect pollutants before they enter the drywell itself. Some of these systems are patented while others simply employ sumps or other common pollution control design features. Setbacks of drywells from water supply wells offer further protection by providing dilution of pollutants within the aquifer.

Prior to January 1, 2001, a number of individual APPs had been issued to gasoline service stations to prevent groundwater contamination. The Department received comments on the APP rules from service station owners who expressed concern that location or construction deficiencies for previously installed drywells could prevent them from taking advantage of the 2.01 General Permit approach adopted in the rule. As a result, Department staff met with representatives of gasoline station owners to explore options either to develop another general permit or to develop guidance on approved flow control or pretreatment technologies that would satisfy the general permit requirements.

The Department contracted with Brown & Caldwell to compile a list of stormwater flow control or pretreatment technologies that would satisfy the requirements of the 2.01 General Permit. The ultimate goal was to have a list of “pre-approved technologies” available for use when applying for authority to discharge under this general permit. Brown & Caldwell researched and evaluated existing technologies to establish the list of technologies suitable for use in removing gasoline components as well as for use in overall stormwater pretreatment.

The Department began holding stakeholder meetings in October 2001 to provide an opportunity to develop the list of technologies to be evaluated and define the parameters to be evaluated. Brown & Caldwell then performed their analysis and developed a draft report of the results. Several drafts of the report were released for stakeholder comment. Although a final report has not yet been issued, the flow control and pre-treatment technologies in this rule are the results of this effort.

This general permit has been developed to provide clear direction to the applicant of the permit requirements. In this way, an applicant can be assured that they will receive their authorization to discharge upon the Department's receipt of the complete Notice of Intent to Discharge.

Arizona Administrative Register
Notices of Proposed Rulemaking

6. A reference to any study that the agency relies on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking assists the Department in accomplishing its mission to protect public health and the environment by preventing inappropriate discharges to the state's groundwater through focusing on prevention and avoiding multiple costs that accompany environmental cleanups.

The rule provides stakeholders with the option to use a general permit rather than an individual permit, which is more costly because an individual permit application takes more effort and technical expertise to prepare, longer to process and review, and a more extensive public participation process.

Because of its specificity, general permits are simpler, have less stringent monitoring and reporting requirements, and take fewer hours to process than individual permits. The applicant must submit a Notice of Intent to Discharge and a fee for general permit coverage.

Any drywell at a motor fuel dispensing facility is eligible for coverage under this Type 2 General Permit. The applicant should realize a significant reduction in approval time because the facility is authorized to operate under a Type 2 General Permit solely by notification to the Department that it meets the technical standards specified in the general permit. The fact that the permit must be renewed every five years, when most individual permits have been issued for the life of the facility, means that additional permitting costs will be incurred. The facility will save on reporting time that will make up for the additional time the facility needs to process renewal applications.

Consumers will be impacted indirectly because expenditures made to ensure the protection of groundwater from pollutants discharged as a result of various activities will be more efficiently used for the protection of public health and safety. To the extent that fewer resources will be required to obtain this general permit, many applicants will be able to obtain these permits faster and at less cost.

Requirements of § 41-1035.

1. Establish less stringent compliance and reporting requirements for small businesses.

Reporting requirements for general permits are less stringent than those for individual permits.

2. Establish less stringent compliance or reporting schedules or deadlines for small businesses.

It is not possible to employ less stringent compliance or reporting schedules or deadlines for small business because all motor fuel dispensing facility owners that have drywells that drain areas where motor fuels are used, stored or loaded are required to have a permit.

3. Consolidate or simplify the rule's compliance and reporting requirements for small businesses.

This general permit promotes a uniform and simple process for all drywells draining motor fuel dispensing facilities. General permits require minimal monitoring requirements and no reporting requirements.

4. Establish performance standards for small businesses to replace design and operational standards.

Because of the importance of reducing impacts to groundwater, the Department currently maintains a performance-based approach to permitting. This general permit provides an easy permitting process for applicants that can meet the criteria specified in the general permit.

5. Exempt small businesses from any or all requirements of the rule.

It is neither legal nor feasible to exempt any discharging facility from the requirements of this rulemaking.

Arizona Administrative Register
Notices of Proposed Rulemaking

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Shirley J. Conard
Address: Arizona Department of Environmental Quality
3033 N. Central Avenue, M0401A-422
Phoenix, AZ 85012-2809
Telephone: (602) 207-4632 (Metro-Phoenix area)
(602) 771-4632 (after July 8, 2002) or
1-800-234-5677, ext. 4632 (other areas)
Fax: (602) 207-4674
E-mail: conard.shirley@ev.state.az.us

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: July 15, 2002
Time: 10:00 a.m.
Location: Carnegie Library Building
1101 W. Washington, Basement Conference Room
(across the street from the new ADEQ Building)
Phoenix, AZ 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by close of hearing, July 15, 2002.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Katie Huebner, at (602) 207-4794 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

Section

R18-9-C304, 2.04 General Permit: Drywells That Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels Are Used, Stored, or Loaded

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

R18-9-C304, 2.04 General Permit: Drywells That Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels Are Used, Stored, or Loaded

A. A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.

Arizona Administrative Register
Notices of Proposed Rulemaking

1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under this general permit.
 2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only areas where motor fuels dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, (including service bays) are not covered under this general permit.
 3. For purposes of this Section, "hazardous substances" means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies, for example, those used for cleaning windshields, except degreasers, engine cleaners, or similar products.
- B. Notice of Intent to Discharge.**
1. An applicant shall provide design information to demonstrate that the requirements in subsection (C) are met.
 2. In addition to the requirements in R18-9-A301(B), all applicants shall submit:
 - a. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department; and
 - b. For a drywell constructed more than 90 days before Notice of Intent submittal, a certification signed and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that the drywell is marked "Stormwater Only" on the surface grate or manhole cover; and
 - i. The settling chamber does not contain sediment for characterizing and comparison of results to soil remediation levels and the chamber has not been cleaned out within the last six months; or
 - ii. Analytical results from sampling of the settling chamber sediment for pollutants reasonably expected to be present do not exceed the residential soil remediation levels or groundwater protection levels; or
 - iii. Soil-borings indicate that neither a soil remediation level nor groundwater protection level is exceeded in soil beneath the drywell.
- C. Design requirements. An applicant shall:**
1. Drywells constructed after July 1, 2001.
 - a. Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;
 - b. Locate the bottom of the drywell injection pipe at least 10 feet above the groundwater table. The applicant shall seal off any zone of perched water above the groundwater table from the drywell injection pipe following the requirements in 12 A.A.C. 15, Article 8;
 2. Include a flow control or pretreatment device or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
 3. Calculate the volume of run-off generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell; and
 4. Follow local codes and regulations to meet retention periods for removing standing water.
- D. A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:**
1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.
 - a. Normally closed valve (manual or automatic). The permittee shall leave a normally closed valve (manual or automatic) in a closed position except when stormwater is allowed to enter the drywell.
 - b. Raised drywell inlet. The permittee shall:
 - i. Raise the drywell inlet at least 6 inches above the bottom of the retention basin or other storage structure, or install a 6 inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and
 - ii. Ensure that the storage capacity is at least 110 percent of the combined volume of the design storm event required by the local jurisdiction and the maximum releasable quantity of spilled motor fuel;
 - c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or storm event when the mat or cap is temporarily removed to allow the stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;
 - d. Primary sump, interceptor, or settling chamber. The permittee may only use a primary sump, interceptor, or settling chamber in combination with another flow control or pre-treatment technology.
 - i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor, or chamber before allowing stormwater to enter the drywell. The permittee shall:
 - (1) Install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell,
 - (2) Install the drywell injection pipe in a separate chamber, and
 - (3) Connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.

Arizona Administrative Register
Notices of Proposed Rulemaking

- h. If procedures other than those listed in subsections (G)(1)(a) through (G)(1)(g) are used in closure, the permittee shall demonstrate to the Department that the procedures used are equivalent and will prevent any fluid migration from the ground surface to an aquifer and obtain approval before implementation;
 - i. Closure Verification. Within 30 days of closure, the permittee shall submit written verification of the closure procedures to the Department with the drywell registration number or a completed registration form. The written verification shall specify:
 - i. The reason for the closure;
 - ii. The materials and methods used to abandon the drywell;
 - iii. The name of the contractor who performed the closure;
 - iv. The completion date;
 - v. Any sampling data collected from the drywell investigation if performed or if required by the Department; and
 - vi. Sump construction details, if a sump is constructed to replace the abandoned drywell.
 - 2. The Department may require additional investigations or corrective actions to ensure that the closure requirements have been met.
 - 3. If no motor fuel or hazardous substance spill enters the drywell, the requirements in subsections (G)(1)(a) through (G)(1)(h) satisfies closure under R18-9-A306.
 - 4. If a motor fuel or hazardous substance spill has entered the injection pipe, the permittee shall comply with the requirements in A.R.S. § 49-252, A.A.C. R18-9-A306, and subsection (H)(3).
- H. Spills. The permittee shall:**
- 1. Notify the Department within 24 hours of any spill of motor fuel or hazardous substances that enters into the drywell or exceeds the treatment capacity of the pretreatment system;
 - 2. Contain, cleanup, and dispose of, according to local, state, and federal requirements, any spill or leak of motor fuel and hazardous substance in the drywell drainage area and basin drainage area;
 - 3. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments to a depth extending at least 10 feet below the base of the injection pipe to determine if a soil remediation level or groundwater protection level has been exceeded in the subsurface; and
 - 4. The Department may require additional investigations or corrective actions if a soil remediation level or groundwater protection level has been exceeded.
- I. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents, or at the closest practical place of work, and make the documents available to the Department upon request:**
- 1. A log book that documents drywell maintenance, inspections, employee training, and sampling activities;
 - 2. A site plan showing surface drainage patterns and the location of floor drains, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
 - 3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies;
 - 4. An operations and maintenance manual that includes:
 - a. Procedures to prevent and contain spills and minimize discharges to the drywell and a list of actions and specific methods that will be used for motor fuel and hazardous substance spills or leaks;
 - b. A method and procedures for inspection and operation and maintenance activities;
 - c. The procedure for spill response; and
 - d. A description of the employee training program.